IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No 9907 of 2004

Ankit Maheshwari ..Petitioner
vs
The Commandant
Armed Forces Medical College & ors....Respondents

Mr.S.C.Maheshwari with Ms L M Nagarkar for petitioner

Mr Pradeep Jetly with D.A Dubey i/b S.S.Sarkar for respondents

CORAM: A.P.SHAH & S.C DHARMADHIKARI JJ.

Dated l4.l2.2004

P.C:

l. By the present petition, the petitioner is challenging the orders dated l2.6.2003 and l8.l0.2004 passed by the Lt Col Training Officer for Command of Armed Forces of Medical College, Pune. By order dated l2.6.2003 the petitioner has been removed from service liability and respondent sought to invoke the bond agreement executed by the petitioner in the sum of Rs.4.50 lacs on the ground that the petitioner had become unfit to serve the Army on the ground of his ill health and by order dated l8.l0.2004 the representation of the petitioner for waiver of payment of bond money has been rejected. In short the case of the petitioner is as under.

2. The petitioner took admission to the respondent no.l college. Petitioner executed a bond inter alia, providing that the petitioner will serve the Nation for a requisite period of time. In l999 the petitioner was admitted to the lst respondent college and has completed his training. However, in the course of time in March 2003 it was found that the petitioner was suffering from Ankylosing Spondilitis and accordingly by an order dated l2.6.2003 the petitioner has been removed from service with effect from l.6.2003. However, while removing him from service liability, the respondents are seeking to enforce the bond on the purported ground of failure on the part of the petitioner to serve the nation in accordance with the terms and conditions of the bond. It is this action of the respondents which is the subject matter of challenge in the present petition.

3. The learned counsel appearing for the petitioner has inter alia, contended that the respondents are not entitled to enforce the bond in as much as petitioner has not shown his unwillingness to serve the nation by joining the Army. It is the respondents who are declaring the

petitioner unfit because of the fact that he is suffering from some disease and it is the case of the petitioner that the petitioner has not voluntarily refused to serve the nation but the respondents are not allowing him to serve the nation. As against this, the learned counsel appearing for the respondents has, inter alia drawn our attention to clause 4(a) of the said bond which inter alia stipulates that the medical cadet will be declared to have become non service liability in the event he being rendered medically unfit for commission due to any disease or disability discovered at any time during the course or prior to considering thereof. In such an event, the respondents will be entitled to enforce the said bond. It is contended that therefore in terms of the said bond, the petitioner is liable to pay the respondents, the sum of Rs.4.50 lacs since the said bond cum bank guarantee is executed by petitioner.

4. We are not impressed with the argument of the respondents herein because we are of the view that a declaration of the petitioner as a non service liability due to his ill health cannot be termed as voluntary breach of the terms and conditions of the bond nor it can be said that the petitioner is

unwilling to serve the nation in terms of the bond executed by him. We are, therefore,of the view that the respondents are not entitled at all to claim any amount under the said bond. Our attention has been drawn by the petitioners in similar matters which are decided by this court, at least in three matters,, this court has taken a view that this is not a case where enforcement of bond can be effected because a person has been declared as non service liability due to his ill health. The courts have disposed of the petition and in some cases have passed interim orders directing the petitioner to make payment of sum of Rs.l lac towards his inability to serve the nation and has directed that the respondents should relieve such a person from the bond executed by the said cadet or his relatives. However, the learned counsel for the respondent has contended that the said orders were passed for payment of Rs.l lac when the bond amount was Rs.3 lacs. In the present case,the bond amount being Rs.4.50 lacs,according to the learned counsel for the respondents,the amount should be proportionately increased to Rs.--lacs. We are not impressed by the aforesaid argument. the amount of Rs l lac was directed to be paid by the earlier Division Benches in the

interest of justice and good conscience and not towards the liability of the person under such bond. We are therefore of the opinion that we should follow the same order and direct the petitioner to pay a sum of Rs.l lac and discharge him from any liability under the said bond.

5. Accordingly, in the interest of justice, we direct the petitioner to pay a sum of Rs.l lac and on such payment being made the petitioner shall stand discharged himself from any of the terms and conditions of the said bond cum bank guarantee and shall not be liable to pay any amount whatsoever.

6. Petition is disposed of accordingly with no order as to costs.